

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ERIC HALVORSON, LAURA FERRER,  
PETER DALLMAN, ROBERT GRANA,  
DENNIS BULCAO, and NEIL YOUNG,  
individually, as representatives of the classes,  
and on behalf of the general public,

Plaintiffs,

v.

TALENTBIN, INC.,

Defendant.

Case No. 3:15-cv-05166-JCS

**ORDER PRELIMINARILY  
APPROVING CLASS ACTION  
SETTLEMENT**

1           Plaintiffs Eric Halvorson, Laura Ferrer, Peter Dallman, Robert Grana, Dennis Bulcao, and  
2           Neil Young (“Plaintiffs”), on behalf of themselves and the Settlement Class Members, and  
3           Defendant TalentBin, Inc. (“TalentBin”) (collectively, the “Parties”), have entered into a  
4           Settlement Agreement dated November 16, 2016 (the “Settlement Agreement”), providing for the  
5           settlement of this case (the “Settlement”).

6           Plaintiffs have moved for, and TalentBin has indicated that it does not oppose, entry of  
7           this Order which, *inter alia*, (a) conditionally certifies the Settlement Class (defined below) for  
8           settlement purposes only; (b) appoints the Settlement Administrator; (c) provides for Notice of  
9           the Settlement to affected persons in accordance with the terms of the Settlement Agreement; (d)  
10          establishes procedures for objections to, and exclusions from, the proposed Settlement; and (e)  
11          sets a date for the Fairness Hearing.

12          Having considered the terms of the Settlement Agreement in light of the issues presented  
13          by the pleadings, the record in this case, the complexity of the proceedings, the absence of any  
14          evidence of collusion between the Parties, and the experience of Settlement Class Counsel in this  
15          matter; and being preliminarily satisfied that the Settlement Agreement is fair, reasonable and  
16          adequate, and being satisfied that the proposed Notice to Settlement Class Members and the plan  
17          for the mailing of that Notice is adequate and sufficiently informative as to the terms and effect of  
18          the proposed Settlement and the conditional certification of the Settlement Class,

19               IT IS ORDERED THAT:

20               1.     This Court has jurisdiction over the subject matter of this Action pursuant to  
21               28 U.S.C. § 1331, as the action arises under the laws of the United States. This Court also has  
22               jurisdiction over all parties to this Action, including all members of the Settlement Class, as  
23               defined in Paragraph 3, below.

24               2.     This Order incorporates by reference the definitions in the Settlement Agreement,  
25               and all capitalized terms used in this Order will have the same meanings as set forth in the  
26               Settlement Agreement, unless otherwise defined in this Order.  
27  
28

1           3.     The Parties have agreed to and the Court provisionally certifies the following class  
2 for the purposes of settlement (the "Settlement Class"):

3  
4           All persons who were the subject of a TalentBin profile and who, between  
5 October 2, 2013, and August 8, 2016, inclusive, (a) requested from TalentBin a  
6 copy of the profile about them or (b) were the subject of a profile, containing at  
7 least one email address not known to be bad, that was exported to a Recruiter.

8           4.     Based on the Court's review of the Settlement Agreement, the Motion for  
9 Preliminary Approval, the supporting brief, declarations of counsel, argument of counsel and the  
10 entire record, the Court finds that certification of the Settlement Class under Fed. R. Civ. P. 23 is  
11 appropriate because the Settlement Class is so numerous that joinder would be impracticable, this  
12 action presents common issues of law and fact that predominate over any individual questions,  
13 the named Plaintiffs and their counsel are adequate representatives of the Settlement Class, and  
14 Plaintiffs' claims are typical of the claims of the members of the Settlement Class. The following  
15 counsel are hereby appointed to represent the Settlement Class: Berger & Montague, P.C. and  
16 Gottlieb & Associates.

17           5.     Based on the Court's review of the Settlement Agreement, the Motion for  
18 Preliminary Approval, the supporting brief, declarations, argument of counsel and the entire  
19 record, the Court finds that the Settlement is fair, reasonable and adequate. The Plaintiffs'  
20 Motion to preliminarily approve the Settlement and certify the Settlement Class is granted.

21           6.     Angeion Group is appointed as Settlement Administrator. By accepting this  
22 appointment, the Settlement Administrator has agreed to be subject to this Court's jurisdiction  
23 solely for purposes of enforcement of the Settlement Administrator's obligations under the  
24 Settlement Agreement.

25           7.     The Settlement Administrator shall email the Notice of the proposed Settlement in  
26 the manner described in section 3.3 of the Settlement Agreement. Such Notice shall be  
27 substantially in the form of Exhibit 2 to the Settlement Agreement. Non-substantive changes may  
28 be made to the Notice by agreement of Parties without further order of this Court.

1           8.     The Court finds and determines that the method of providing notice to Settlement  
2 Class Members specified in section 3.3 of the Settlement Agreement and the manner of providing  
3 for opt-outs specified in section 3.6 of the Settlement Agreement are reasonable and appropriate,  
4 and satisfy the requirements of due process and the Federal Rules of Civil Procedure.

5           9.     The Settlement Administrator is directed to file with the Court no later than  
6 **June 30, 2017**, a sworn declaration (a) confirming that the Settlement Class Members' email  
7 addresses were updated, and that the Notice was provided to all Settlement Class Members, as  
8 required by section 3.3 of the Settlement Agreement; and (b) providing an accurate list of persons  
9 who opted out of the Settlement Class pursuant to section 3.6 of the Settlement Agreement.

10           10.    If the Court does not enter the Final Judgment of the Settlement attached as  
11 Exhibit 3 to the Settlement Agreement without material modification, or if the Final Judgment is  
12 reversed in whole or in part on appeal, certification of the Settlement Class will be vacated and  
13 the Parties will be returned to their positions status quo ante with respect to the Action as if the  
14 Settlement had not been entered into. In the event that Final Approval is not achieved, (a) any  
15 Court order preliminarily or finally approving the certification of any class contemplated by the  
16 Settlement and any other orders entered pursuant to the Settlement Agreement shall be null, void,  
17 and vacated, and shall not be used or cited thereafter by any person or entity in support of claims  
18 or defenses or in support or in opposition to a class certification motion or for any other purpose,  
19 and (b) the Settlement Agreement will become null and void and the fact of the Settlement, that  
20 TalentBin did not oppose the certification of any class under the Settlement, or that the Court  
21 preliminarily approved the certification of a settlement class, shall not be used or cited thereafter  
22 by any person or entity for any purpose, including in any contested proceeding relating to the  
23 certification of any class. In addition, if the Final Judgment is reversed in whole or in part on  
24 appeal, the release of claims set forth in section 5 of the Settlement Agreement shall be rescinded.

25           11.    All materials and information provided by TalentBin to Settlement Class Counsel  
26 or the Settlement Administrator with respect to the members of the Settlement Class may be used  
27 only for purposes of providing the Notice to Settlement Class Members or administering the  
28

1 Settlement and for no other purpose whatsoever. Settlement Class Counsel and the Settlement  
2 Administrator are directed to limit access to such materials and information to those persons who  
3 have a need to know such information to provide the Notice to the Settlement Class.

4 12. A hearing (“Fairness Hearing”) shall be held before this Court on the date  
5 established in paragraph 22 hereof to hear objections and determine (i) whether the proposed  
6 Settlement and compromise of this Action as set forth in the Settlement Agreement is fair,  
7 reasonable and adequate to the Settlement Class Members and should be approved by the Court;  
8 (ii) whether the Final Judgment should be entered approving the Settlement; (iii) whether a Final  
9 Judgment should be entered, dismissing the Action, on the merits and with prejudice, and to  
10 determine whether the release of claims, as set forth in the Settlement Agreement, should be  
11 approved; (iv) the amount of attorneys’ fees and expenses reasonably incurred in prosecution of  
12 the litigation to be paid to Settlement Class Counsel; (v) the amount of the Service Payment to be  
13 paid to the Settlement Class Representatives; and (vi) such other matters as the Court may deem  
14 appropriate.

15 13. The Court has reviewed TalentBin’s Notice of Class Action Settlement Pursuant to  
16 28 U.S.C. § 1715 that TalentBin served upon the various state attorneys general on November 23,  
17 2016 and finds that the notice has been timely served upon the appropriate State officials.

18 14. Any interested person who has not opted out of the Settlement Class may appear at  
19 the Fairness Hearing to show cause why the proposed Settlement should or should not be  
20 approved as fair, reasonable, and adequate; provided, however, that no person shall be heard or  
21 entitled to contest the approval of the terms and conditions of the proposed Settlement unless that  
22 person has (i) filed with the Court a written objection and any supporting papers or briefs on or  
23 before the date established in paragraph 22 hereof, (ii) stated in the objection that he or she  
24 intends to appear at the Fairness Hearing, either in person or through counsel, and (iii) served, so  
25 that they are postmarked no later than the last date for filing established in paragraph 22 hereof,  
26 copies of such papers upon on counsel at the following addresses:

**To Counsel for Plaintiff:**

E. Michelle Drake, Esq.  
Berger & Montague, P.C.  
43 Main Street SE, Suite 505  
Minneapolis MN 55414

**To Counsel for TalentBin:**

Angela E. Kleine, Esq.  
Morrison & Foerster LLP  
425 Market St.  
San Francisco, CA 94105-2482

All properly submitted objections shall be considered by the Court. Any Settlement Class Member who does not submit an objection in the manner provided above and section 3.8 of the Settlement Agreement shall be deemed to have waived any objection to the Settlement and shall forever be foreclosed from making any objection to class certification, to the fairness, adequacy or reasonableness of the Settlement, and to any attorneys' fees and reimbursements approved by the Court.

15. Settlement Class Counsel's request for approval of attorneys' fees, costs and reimbursement of expenses shall be filed on or before the date established in paragraph 22 hereof.

16. All memoranda, declarations and other evidence in support of the request for Final Approval shall be filed on or before the date established in paragraph 22 hereof.

17. All proceedings in this Action other than such as may be necessary to carry out the terms and conditions of this Order or the responsibilities incidental thereto are stayed and suspended as between the Plaintiffs and TalentBin until further order of the Court.

18. The parties have advised the Court that there are, to their knowledge, no lawsuits pending in any state or federal court or in any arbitral forum asserting claims that would be foreclosed by final approval of this settlement. To preserve the status quo pending this Court's determination on whether to approve the proposed Settlement, IT IS HEREBY ORDERED under 28 U.S.C. § 1651 and Rule 23 of the Federal Rules of Civil Procedure that:

Except as expressly provided in the Settlement Agreement, the Settlement Class Members are temporarily enjoined from commencing, continuing or taking any action in any judicial proceeding in any state or federal court or any other judicial or arbitral forum against TalentBin with respect to any of the Released Claims.

This injunction will terminate at the time the Court determines whether to approve the class

1 certification and proposed Settlement (unless converted into a permanent injunction in the Order  
 2 approving the Settlement) and, prior to that time, any request for relief from the injunction shall  
 3 be made to this Court.

4 19. This Order is intended to immediately stop all litigation involving the claims  
 5 released by the Settlement Agreement in all courts and other judicial and arbitral tribunals  
 6 throughout the United States. Any individual who wishes to object to, or comment on, this  
 7 Settlement or certification will have the opportunity to be heard at the Fairness Hearing scheduled  
 8 by this Court.

9 20. The Court expressly reserves its right to adjourn the Fairness Hearing from time to  
 10 time without further notice other than to counsel of record and to approve the proposed  
 11 Settlement and request for approval of attorneys' fees and expenses at or after the originally  
 12 scheduled Fairness Hearing.

13 21. The Court retains exclusive jurisdiction over the Action and all matters arising out  
 14 of or connected with the proposed Settlement.

15 22. Pursuant to this Order, the schedule for dissemination of Notice, requesting  
 16 exclusion from or objecting to the proposed Settlement, briefing, and the Fairness Hearing, is as  
 17 follows:

18	Deadline for first e-mailing Notice	February 9, 2017.
19	Deadline for Settlement Class	April 10, 2017.
20	Members to opt out	
21	Deadline for filing Settlement Class	March 9, 2017.
22	Counsel's Motion for Attorneys' Fees	
23	and Class Representative Service	
	Payments	
24	Deadline for objections to proposed	May 1, 2017.
	Settlement	
25	Deadline for Claims to be submitted	June 9, 2017.
26	Deadline for filing Motion for Final	
27	Approval	June 9, 2017.
28		

1                   Deadline for filing responses to  
2                   objections to proposed Settlement

June 16, 2017.

3                   Fairness Hearing

**July 14, 2017, at 9:30 AM.**

4  
5                   IT IS SO ORDERED.

6  
7                   Date: January 27, 2017

8  
9                     
10                  HONORABLE JOSEPH C. SPERO  
11                  CHIEF MAGISTRATE JUDGE  
12                  UNITED STATES DISTRICT COURT  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28